

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

DR. JOHN ROE, PH.D.

Plaintiff,

vs.

UNITED STATES OF AMERICA, et. al.,

Defendant(s)

)
)
)
)
) **Case No.: 5:22-CV-00869-JKP-HJB**
)
)
)

**DECLARATION OF ATTORNEY JASON R. WAREHAM IN SUPPORT OF
PLAINTIFF'S MOTIONS TO COMPEL ACCESS TO CLASSIFIED INFORMATION**

Declarant, Jason R. Wareham, attorney for Plaintiff, attests to the following facts in support of Plaintiff's Motion to Compel Access to Classified Information.

1. I am an attorney licensed to practice law in New York, D.C., Colorado, Nebraska, and Iowa.
2. I am a former Marine Corps judge advocate who practiced in that capacity on active duty from 2008 to 2020.
3. During that time, I had regular training on classified material management.
4. From 2008 to 2016, I held a SECRET level security clearance through the Department of Defense.
5. From 2016, to Present¹, I maintained a TS/SCI with Special Access Program read on (same level as Plaintiff's work) in connection with my work as a detailed defense counsel in front of the Military Commissions in Guantanamo Bay, Cuba.

¹ The current status of my security clearance is unknown. Though I separated from the military in 2020, I remained attached to the civilian counsel pool at the Military Commissions Defense Organization. Only recently, I was informed of additional paperwork for that position, which has been submitted. While normally, my security clearance would have been up for reinvestigation around December 2021, I understood at the time that COVID constraints had slowed reinvestigations. I have asked MCDO for a status on my clearance. I am confident that, should a reinvestigation or renewal be required, I would meet the requirements for continued TS/SCI eligibility.

6. At the Military Commissions I represented detainees on the capital defense teams for 9/11, U.S.S. Cole, and Malaysian Bombing cases.
7. During that time, I had regular access to, and responsibilities concerning handling of, TS/SCI – SAP level classified materials.
8. I am fully competent and able to handle classified information at the highest levels.
9. I raised the issue of the need to access and submit classified information to the Court early in the litigation. *See* Att. A to this Declaration, Email, *Classified Information in Civil Cases*.
10. Presuming the Government was acting on this information and concurrent request in a telephone conference that we stipulate to procedures similar to the Classified Information Protection Act, I gave the Government time to consult on the matter.
11. I followed up on this request in February of 2023 and learned that nothing further had been achieved on this request.
12. On February 13, 2023, I submitted a letter to the Classification Authorities through Government counsel requesting the necessary “read ons” and a SCIF location in Texas so that I could properly evaluate facts Plaintiff asserts are necessary to this litigation. Att. B, Ltr to Classification Authorities dated February 13, 2023.
13. While that request was pending, the litigants engaged in the R. 26(f) report conferences.
14. The Government counsel took the position in that conference and in the report that accessing the classified contents of Plaintiff’s mind was “discovery” and that all discovery had halted at the time of the filing of their Motion to Dismiss.
15. On April 4, 2023, the Classification Authorities summarily denied my request to access classified information within Plaintiff’s mind. *See* Att. C, Email, *Extension and Rule 26F*, dated April 4, 2023.

16. The inability to access classified information contained within the Plaintiff's own mind is materially prejudicing Plaintiff's ability to litigate his claims, amend the Complaint, and respond to the Defendants' Motion to Dismiss.

17. Further, the arbitrary and capricious denial of access by individuals who have previously held "read ons" commensurate with the level of classification is materially interfering with my ability to adequately represent Plaintiff in this matter.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 28, 2023.



Jason R. Wareham, CO Bar No: 56974
Pro Hac Vice
The Law Center P.C.
300 Plaza Dr., Ste 200
Highlands Ranch CO 80129
303-991-5200
Litigation@thelawcenterpc.com